XIV. THE BUREAU SHOULD ADOPT VERIZON'S PROPOSED CONTRACT LANGUAGE ON DISCONTINUANCE OF SERVICE BECAUSE IT COMPLIES WITH STATE LAW AND IS IDENTICAL TO LANGUAGE IN THE AT&T AGREEMENT RESULTING FROM THE VIRGINIA ARBITRATION (ISSUE C24)

The Bureau should reject Cavalier's claim that Verizon be required to obtain an order from the Virginia SCC or the Commission before terminating service to Cavalier for nonpayment. Even Cavalier concedes that Verizon's termination for nonpayment process, sometimes called the "embargo" process, contains no such requirement and nevertheless works well. *Hearing Tr* at 327:18-20 (Whitt) ("[W]e feel like the embargo process works.") Nor has Cavalier been able to point to a single situation where it needed the contract terms that it advocates here; to the contrary, Cavalier concedes that, under the current system, disputes are resolved. *Hearing Tr* at 328:1-5 (Whitt). Finally, Cavalier concedes that it is unaware of any other interconnection agreement that contains language similar to what Cavalier proposes here. *Hearing Tr* at 324:13-17 (Whitt).

Verizon's Proposed Section 22.4 allows Verizon to terminate services to Cavalier if and only if Cavalier defaults on payments that are not subject to a bona fide dispute, and Cavalier fails to cure that default within sixty days. This proposed language is identical to language in the AT&T agreement resulting from the *Virginia Arbitration Order*. And, as Verizon also explained in testimony and at the hearing, this language complies with Virginia law governing termination of service. *Verizon Response, Exhibit A* at 53-54; *Smith Direct* at 22:11-26:19; *Smith Rebuttal* at 15:18-17:12; *Hearing Tr.* at 329:15-330:3, 330:11-331:1 (Smith).

Cavalier's proposed requirement that Verizon obtain prior Virginia SCC or Commission approval before terminating service to Cavalier, on the other hand, goes far beyond what is required by law. This in effect would require Verizon to invoke a quasi-evidentiary proceeding to terminate service for a CLEC that does not pay its bills, a significant burden not only on

Verizon but on the Virginia SCC and/or the Commission as well. *Smith Direct* at 24:5-10. Moreover, Cavalier's language would require Verizon to continue providing service to Cavalier long after Cavalier has stopped paying for it. *Smith Direct* at 25:5-9. This is not a hypothetical concern; Cavalier has a history of not paying its bills from Verizon. *Hearing Tr.* at 313:4-18 (Smith); *Smith Direct* at 25:18-26:10.

Under Verizon's proposed contract language as well as Virginia SCC rules, Verizon could not terminate services to Cavalier – even where Cavalier has defaulted on its obligation to pay Verizon for these services – without fulfilling each of the following requirements:

- Verizon must provide Cavalier with 60 days written notice of the default and Verizon's intention to terminate services if the default is not cured (Agreement § 22.4);
- Verizon must notify the Virginia State Corporation Commission's Division of Communications within three business days of notifying Cavalier of its proposed suspension or disconnection of service (Va. Admin. Code § 5-423-80(E) (2003));
- Verizon must provide Cavalier and the appropriate federal and/or state regulatory authorities with written notice of its intention to terminate services at least twenty-five days prior to the proposed service termination date (Agreement § 22.4);
- only after the 60 day notice period has elapsed, and Cavalier has still not cured its default, Verizon is permitted under the Agreement to terminate services.

Under these terms, Verizon would provide Cavalier and the Virginia SCC sixty days notice of its intention to terminate services. The Virginia SCC has issued rules that squarely address incumbent LECs' disconnection of services to CLECs for nonpayment of charges, and these rules require incumbent LECs to give both the Virginia SCC and the CLEC notice sixty days prior to the proposed date of termination. *See* Va. Admin. Code § 5-423-80(B) (resale CLECs), § 5-423-80(C) (facilities- and UNE-based CLECs).

Cavalier's main complaint about Verizon's language is that it would prompt Cavalier to give notice to its customers in the event of an embargo. But the notice requirement Cavalier complains of is required by Virginia law, not by any provision of Verizon's proposed language. The Virginia SCC requires CLECs to notify their customers 30 days in advance of the date on which they plan to discontinue service offerings. Va. Admin. Code § 5-423-20(B) (for CLECs intending to cease all operations in Virginia), § 5-423-30(B) (for partial discontinuances), § 5-423-40(B) (for withdrawals of tariffed service offerings), § 5-423-50(B) (for CLECs intending to terminate obsolete tariffed services). As discussed above, under Verizon's proposal, Cavalier has a full thirty days from the date it receives Verizon's notice of default in which to cure its default or, if Cavalier believes Verizon wrongly issued its notice of default, pursue the Agreement's bona fide dispute resolution mechanisms before Cavalier is required to notify its customers of an impending service disruption.

Those dispute resolution provisions are contained in Verizon's Proposed Agreement Section 28.9. If Cavalier believes it has a bona fide dispute regarding a Verizon bill, it may invoke these procedures at any time, including when it first receives the allegedly erroneous Verizon bill and certainly before Cavalier receives any default notice from Verizon. Both parties' proposed language for Section 22.4 specifically except unpaid amounts that are "subject to a bona fide dispute pursuant to Section 28.9" of the Agreement. *Revised Joint Decision Point List*, Issue C24, filed October 21, 2003. Thus, Verizon could not issue a default-termination notice pursuant to Section 22.4 based on a valid dispute.

Verizon treats every dispute from Cavalier as "bona fide" until after it has conducted a full investigation and determined whether or not to reject the dispute, either in whole or in part. Upon rejection of its dispute, Cavalier has the opportunity to escalate Verizon's rejection and subject the dispute to further review under Section 28.9 of the Agreement. *See Hearing Tr.* at 313:21-315:6 (Smith) ("We accept all disputes from the customer when they come in as a bona fide dispute. We then go through our process to review the disputes and then we provide back to the customer a resolution letter, telling them that their dispute is either granted or denied or granted in part and denied in part, and then if the customer disagrees with our finding, they can go ahead and escalate that, so they can turn around and respond to us through the escalation process on the billing side that they disagree with our assessment of that, and ask to have it … reviewed again…. [Escalation] takes it out of the collection activity and puts it back into the dispute category."). At no point during this process may Verizon issue default notices for any of the amounts in dispute.

At the Hearing, Staff asked the parties to discuss the effect of the Commission's discontinuation rules (47 CFR § 63.71) on this issue. *Hearing Tr.* at 333:14-19 (Adams). Part 63 of the Commission's Rules applies only to interstate services. 47 CFR § 63.01(a) ("Any party that would be a domestic *interstate* communications common carrier is authorized to provide domestic, *interstate* services to any domestic point and to construct or operate any domestic transmission line ….) (emphasis added). Therefore, the discontinuation provisions contained in the Agreement are unaffected by the federal requirements.

Moreover, even if 47 CFR § 63.71 did apply in these circumstances, Verizon's proposed contract provisions give Cavalier enough time to comply with applicable federal rules. 47 CFR § 63.71 requires a local exchange carrier to state in its notification to customers of a planned discontinuation of service that they have fifteen days to file comments regarding the carrier's discontinuation plan. 47 CFR § 63.71(a)(5)(i) (for non-dominant carriers). The regulation also states that the carrier's plan automatically becomes effective on the 31st day following its filing with the Commission, absent Commission action to the contrary. 47 CFR § 63.71(c). Cavalier need not file its application to discontinue service with the Commission or inform its customers of such a plan until a full thirty days after initially being notified of default by Verizon. Even then, Cavalier could initiate a proceeding to block any service embargo imposed by Verizon. *Smith Rebuttal* at 16:7-9; *Whitt Direct* at 14:20-21 ("Like Verizon's affiliate in Delaware did when Cavalier's affiliate there threatened a service embargo, Cavalier could initiate an emergency proceeding.").

This Commission has stated that its policy in promulgating Rule 63.71 was to streamline barriers to entry and exit into the telecommunications industry by providing an efficient way for carriers to gain approval for discontinuing their services where commercially necessary, while at the same time maintaining the authority to police abusive practices against consumers. *See* Final Rule, *Section 214 Deregulated Entry Requirements and Streamlined Exit Requirements for Domestic Telecommunications Common Carriers*, CC Docket No. 97-11, FCC 99-104, 64 FR 39939 (1999). The Commission did not intend for Rule 63.71 to serve as a shield for CLECs to invoke when they wish to avoid having their service terminated by the incumbent LEC for nonpayment.

The net effect of Cavalier's proposed language is to require a Commission or Virginia SCC order before Verizon could terminate service to Cavalier, even when Cavalier refuses to pay undisputed amounts. This would allow Cavalier to continue to receive services from Verizon, and even to order new services, for months on end. This would be a wasteful, unnecessary, and unlawful result. *See Hearing Tr* at 329:16-330:1 (Smith) ("I believe [Cavalier's] language is actually requiring the Commission to issue an order, in order for us to proceed with an embargo or termination … we have no control over whether or not the Virginia SCC would or would not issue an order. So they have … potentially precluded us from pursuing .. a remedy here.").

Verizon's Proposed Section 22.4 is a standard commercial arrangement. The Bureau should approve it.

XV. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED NEW SECTION 25.5.7 BECAUSE IT IS UNREASONABLE, UNNECESSARY, AND WOULD EVISCERATE THE AGREEMENT'S LIMITATION OF LIABILITY PROVISION (ISSUE C25)

The parties have agreed that the Agreement should contain a reasonable limitation of liability provision. Proposed Agreement Section 25. That language is identical to the language that the Bureau approved in the *Virginia Arbitration Order*. The parties further agreed in Section 25.2 that each party's liability to the other and its customers for claims resulting from a service failure will not exceed an amount equal to the pro rata applicable monthly charge for the service.

Cavalier now proposes adding new language to Section 25.5, which outlines an exception to the limitations of liability and which would eviscerate the agreed-upon liability limits established in Section 25.2. Cavalier's proposed exception would allow Cavalier to bring a claim against Verizon for virtually any alleged "violation of the laws governing communications." The Bureau should reject Cavalier's proposal because it would render the Agreement's liability limits meaningless. Cavalier's proposal is unprecedented, commercially unreasonable, unnecessary, and not authorized by the Act. Cavalier's proposed language would effectively require Verizon to guarantee perfect service to Cavalier. *Romano Direct* at 4:1-4. Cavalier's proposed language therefore should not be adopted.

In contrast, Verizon's proposed compromise language in Section 25.5 adequately addresses Cavalier's concerns regarding defamation, false advertising, and antitrust liability (the three areas that Cavalier specifically identified as concerns with Verizon's proposed language) without undermining the rest of the Agreement's limitation of liability provision. The Bureau should adopt Verizon's proposed additions to Section 25.5 and reject Cavalier's proposed Section 25.5.7.

Cavalier proposes an exclusion from the Agreement's liability limits "a claim of violation of the laws governing communications," including 47 U.S.C. §§ 151 et. seq., Virginia state law governing communications, and "any unstayed regulations or decisions of a regulatory body." Cavalier's Proposed Section 25.5.10. This exception is so broad that it virtually eliminates the limitations of liability in Section 25. Any breach of this contract is arguably a violation of 47 U.S.C. §§ 151 et. seq., and comparable Virginia state law. Cavalier's proposed exclusion might, therefore, allow Cavalier to seek unlimited damages for virtually any service failure. Under Cavalier's proposal, Cavalier could argue that Verizon was financially responsible for lost profits and consequential damages without limitation any time Verizon failed to provide perfect service. Such a provision is commercially unreasonable. *Romano Direct* at 1:18-22; 3:3-4:6.

It is well settled that communications common carriers may reasonably limit their liability, and the Commission has recognized that limitation of liability provisions strike "a balance between the rights of the aggrieved customers and the public interest in the provision of telephone service at the lowest possible cost." *In the Matter of AT&T*, 82 F.C.C. 2d 370, 372 (1980). Indeed, the parties already agreed to limit Verizon's liability for service failures. *See* Proposed Agreement Section 25.2. Cavalier should not be allowed to functionally refuse to limit liability by agreeing, first, to limit liability, but then, second, insisting on a vast exception to agreed-upon liability limits.

Moreover, Cavalier's sweeping liability exclusion is not necessary to ensure that Verizon provides services, facilities, and arrangements in accordance with the performance standards required by law. Section 26.1 of the Agreement specifically incorporates Verizon's responsibilities under the Virginia Performance Assurance Plan ("PAP") approved by the Virginia SCC and the Commission in the Virginia Section 271 Order. *Virginia § 271 Order* ¶ 198; Order, *Establishment of a Performance Assurance Plan for Verizon Virginia Inc.*, PUC010226 (Va. SCC, Filed Nov. 1, 2001). The PAP contains a comprehensive set of performance measurements for timeliness, reliability, and quality of service. It includes self-executing remedies that put up to $205 million at risk annually if Verizon's performance falls below proscribed standards. Contrary to Cavalier's contentions, the PAP provides sufficient incentive for Verizon to provide equitable service. *See Whitt Direct* at 15:11-13; *Romano Rebuttal* at 1:19-23. A broad exclusion to the liability limits in Section 25.5 for service failures is therefore unnecessary. Cavalier need not be permitted to seek unlimited damages for service failures to ensure service parity.

Cavalier's proposal is an attempt to circumvent the PAP, and receive individualized performance standards in this agreement. The Bureau should reject Cavalier's attempt to guarantee itself perfect service. The Act requires only parity. *Romano Direct* at 4:7-14. The Bureau has already rejected a similar request from WorldCom in the *Virginia Arbitration*. In rejecting WorldCom's proposal, the Bureau found that "Verizon has no duty to provide perfect service to its own customers; therefore it is unreasonable to place that duty to provide perfect service to WorldCom." *Virginia Arbitration Order* ¶ 709. The logic of the Bureau's decision translates to Cavalier's proposed exclusion in Section 25.5.7. If Cavalier could sue Verizon, without limitation, for any violation of state or federal telecommunications law, then the agreed-upon limitation of liability provision would be eviscerated, and Cavalier could seek unlimited damages from Verizon for anything short of perfect service. The Bureau must therefore reject Cavalier's proposal.

XVI. THE PARTIES' AGREEMENT SHOULD NOT INCLUDE CAVALIER'S PROPOSED CHARGES FOR WINBACKS AND TRUCK ROLLS (ISSUE C27)

Cavalier's Proposed Exhibit A(2) and Section 11.17 would assess a variety of unwarranted "UNE-related" charges on Verizon, primarily associated with "truck rolls" and winbacks. The Bureau should reject Cavalier's proposed language because, as the Bureau recognized in the *Virginia Arbitration* Order, it lacks jurisdiction in a Section 251 arbitration to determine the rates that a CLEC proposes to charge an incumbent carrier. Moreover, even if the Bureau had jurisdiction to consider these charges, it should reject them because they are unnecessary, unsubstantiated, and unfair.

A. The Bureau Does Not Have Jurisdiction To Set The "UNE-Related" Rates That Cavalier Proposes To Charge Verizon.

The Bureau has already acknowledged that it lacks jurisdiction over intrastate rates charged by competitive local exchange carriers to incumbents. *Virginia Arbitration Order* ¶ 588. An interconnection agreement may include rates on which the parties have agreed or which the Commission's Rules prescribe In all other cases, however, including the UNE-related charges that Cavalier seeks to impose here, Cavalier must seek authorization from the Virginia SCC for the rates it proposes to charge. *Virginia Arbitration Order* ¶ 589.

Cavalier offers a copy of a January 27, 2003 letter from Senior Communications Specialist Garland Hines of the Virginia SCC Staff rejecting a Cavalier tariff as authority as support for its request to include "UNE-related" rates charged by Cavalier to Verizon in the interconnection agreement. *Clift Direct*, Exhibit MC-11. But this letter is far from a definitive ruling by the Virginia SCC on this subject: Mr. Hines' letter makes clear that he considered Cavalier's tariff too vague to understand, and that, in any event, it had not been filed on time. *Albert Panel Rebuttal* at 21:5-14. This does not prove that the Virginia SCC would conclude that these charges should not be contained in a tariff, just as other rates Cavalier would normally charge Verizon.

But even if the letter said what Cavalier wants it to say, that letter cannot trump the Bureau's jurisdictional holding in the *Virginia Arbitration Order*:

> [T]he Bureau, acting as the Virginia Commission for purposes of this proceeding, is authorized by section 252 to determine just and reasonable rates to be charged by Verizon, not petitioners. As Cox points out, the Commission has ruled that it would be *inconsistent with the Act* for a state commission to impose section 251(c) obligations on competitive LECs.

Virginia Arbitration Order ¶ 589 (emphasis added; footnotes omitted). The Bureau made it clear that its decision was required by the terms of Sections 251 and 252 of the Act, and the letter Cavalier offers from the Virginia SCC – regardless of how it is read – cannot undermine that ruling.

At the Hearing, Cavalier witness Clift pointed to a section of the parties' proposed agreement as supposed proof that the agreement could contain rates Cavalier charges Verizon. Although the record is not clear, it appears that Mr. Clift was referring to a section of the agreement entitled "Cavalier Services, Facilities, and Arrangements." *Hearing Tr.* at 627:7 – 630:9 (Clift). This section contains rates for reciprocal compensation and also contains Cavalier's tariffed rates for access and collocation, as well as a catch-all section for "All Other Cavalier Services Available to Verizon for Purposes of Effectuating Local Exchange Competition." Verizon's Proposed Exhibit A(2) at 152.

This contract provision is consistent with the Bureau holding discussed above. The Bureau stated that an interconnection agreement may contain rates which the Commission's Rules prescribe (which would include reciprocal compensation rates) and rates on which the parties have agreed, or for which the Virginia SCC has approved a tariff (which would cover the balance of the rates in the section to which Mr. Clift apparently referred). *Virginia Arbitration*

Order ¶ 589. The charges that Cavalier seeks to impose here are not prescribed by Commission Rules, Verizon has not agreed to them, and they have not been tariffed in Virginia. Therefore, they cannot be included in the parties' interconnection agreement.

B. Cavalier's Proposed Truck Roll Charge Is Inappropriate.

Cavalier says that Verizon's mistakes in installing loops force Cavalier to dispatch its own trucks, and that Verizon should pay for these truck rolls. Cavalier, however, has not submitted any cost studies to support these rates. Moreover, the evidence shows that the truck rolls for which Cavalier seeks payment often occur for reasons beyond Verizon's control, and that, even if Verizon makes a mistake in installing a loop, Cavalier can reduce truck rolls by taking a few reasonable steps.

Cavalier witness Webb stated that, upon completion of the installation of a new loop, Cavalier checks to see whether the loop is working by making a test call to the customer. If Cavalier is unable to reach the customer to verify that service has been established, Cavalier dispatches a technician. *Webb Direct* at 5:10-12; *Hearing Tr.* at 633:19-21 (Webb). Cavalier wants to be paid for each of these truck rolls. *Clift Direct* at 22:18-20. However, there are a number of reasons, through no fault of Verizon, why Cavalier may be unable to reach a customer immediately after a loop is installed. The customer may not be home when Cavalier calls; the customer may not yet have purchased a telephone; or the customer may simply have decided not to pick up the call.

Cavalier could also reduce its truck rolls by participating in Verizon's Cooperative Testing program for digital (or xDSL-capable) loops, which cost the same as analog loops. Verizon's Proposed Exhibit A(VI). Under this program, in which most CLECs participate, when Verizon completes a service installation, a Verizon technician calls Cavalier at a number

Cavalier provides on the order form. The Verizon technician then works with Cavalier in real time to confirm that the service is working. If the service is not working, Verizon will not charge Cavalier to resolve the problem. *Albert Panel Rebuttal* at 21:23 – 22:3.

Cavalier also claims that its proposed truck roll charge will encourage Verizon to commit fewer errors in installing loops for Cavalier. Verizon, however, is already subject to performance standards in Virginia that carry substantial monetary penalties for nonperformance Section 26.1 of the parties' interconnection agreement specifically incorporates Verizon's responsibilities under the Virginia PAP, approved by both Virginia SCC and by the Commission. *Virginia PAP Proceeding*, *Virginia § 271 Order* ¶ 198. The PAP contains a comprehensive set of performance measurements for timeliness, reliability, and quality of service, as well as self-executing remedies that put up to $205 million at risk annually if performance falls below these standards. *Romano Direct* at 5:2-5

The Commission examined the PAP during Verizon's section 271 application in Virginia and ruled that the Virginia PAP was effective in ensuring non-discriminatory treatment of CLECs:

> [W]e find that the Virginia Plan is reasonable to ensure an open local market in Virginia. We conclude that the Virginia Plan, in concert with the Virginia State Corporation Commission's active participation in implementing modifications to promote the oversight of Verizon's performance, provides sufficient assurance that Verizon will have a *compelling incentive* to maintain post-entry checklist compliance. We also note that *no party challenged the effectiveness of the plan.*

Virginia § 271 Order ¶ 198 (emphasis added; citations omitted).

Cavalier complains that the PAP does not cover missed appointments and loops that were not properly delivered, (*Clift Surrebuttal* at 1-3), but in fact, the Virginia PAP covers all of these situations. *Agro Rebuttal* at 6:4-5. Cavalier also argues that the PAP's performance measures inappropriately mix performance on UNE-loops (which Cavalier uses) with performance on

UNE-platform (which Cavalier does not use), but the Virginia PAP also includes performance measures that are specific to the installation of UNE Loops. In fact, PR-4-04-3113 (Percent of Missed Appt. – Verizon – Dispatch - Loop New) measures provisioning performance for new loops. The quality of new loop installation is also measured by PR-6-01-3112 (Percent Installation Troubles Reported Within 30 Days - POTS Loop – UNE), which captures troubles reported on newly installed loops that Cavalier reports as not working. *Agro Surrebuttal* at 1:4-13 Metrics for missed repair appointments, average delay days, lines out of service for more than 24 hours, and repeat reports within 30 days are also measured separately for UNE-loop and UNE-platform providers. *Agro Surrebuttal* at 1:22 – 2:25.

Cavalier is concerned that the Virginia PAP does not measure Verizon's performance "vis-à-vis Cavalier." *Clift Direct* at 22:5-7. Cavalier's concern here is also misplaced. In addition to assuring satisfactory performance to CLECs in the aggregate, the PAP was designed to assure satisfactory performance for individual carriers. If Verizon does not meet a critical measure at the industry aggregate level in a given month, Verizon must make penalty payments to every CLEC that received substandard service. If Verizon meets a critical measure at the industry aggregate level for two consecutive months, but nonetheless misses the measure in both months "vis-à-vis Cavalier," Verizon must pay penalties to Cavalier. Therefore, the carrier-specific remedies contained in the Virginia PAP are sufficient to address Cavalier's concerns, and there is no need for the additional layer of carrier-specific remedies Cavalier proposes. *Agro Rebuttal* at 7:6-16.

Cavalier relies on the fact that Cavalier has not received payments pursuant to the PAP as evidence of the fact that the PAP does not provide Cavalier with adequate protection from receiving substandard service. *Clift Surrebuttal* at 3. But the reason that Cavalier has not received payments under the PAP is because Verizon has met benchmark standards set by the Virginia SCC and has provided Cavalier with generally better service than Verizon provides to its own retail customers. *Agro Surrebuttal* at 2:29-31.

Cavalier proposes a unique set of measures and penalties just for Cavalier. If the Bureau approves such special measures and penalties for Cavalier, other CLECs are sure to demand this same special treatment, leaving Verizon to try to administer a bewildering patchwork system of measures and penalties. The PAP is designed to avoid just such problems and to ensure nondiscriminatory treatment as between all CLECs. If Cavalier is unhappy with the Virginia SCC-mandated PAP, it can seek changes through a generic proceeding like PUC010226, the proceeding in which the Virginia SCC considered and adopted Verizon's current PAP. *Albert Panel Direct* at 28:20 – 29:5.

C. The Bureau Should Also Reject Cavalier's Proposed Winback Charge

Cavalier proposes to charge Verizon a "processing charge" and an installation fee when a Cavalier customer decides to return to Verizon. Cavalier's Proposed Section 11.17.1. Cavalier also proposes a separate charge "when Verizon requests the return of a UNE loop on an expedited basis." Cavalier's Proposed Section 11.17.5. Cavalier lists these "UNE-related" charges in Exhibit A(2) of its Proposed Agreement, but does not provide any cost studies to support these rates. In fact, Cavalier makes no attempt at all to support these rates, but just plucks them from Verizon's pricing schedule for the UNE charges Verizon bills to Cavalier when Cavalier orders a new UNE loop and then attempts to turn these around and apply them to Verizon when Verizon wins a customer back from Cavalier. Since Cavalier has provided no evidence that its costs are the same as Verizon's (and the costs are different), the Bureau should reject Cavalier's proposal.

Cavalier's "winback" charges mix apples and oranges. When Cavalier loses a customer that it serves with its own switch, it performs only a few, limited functions. Cavalier must receive a service order to port the customer's number; port the customer's number to the other carrier, and update the E 9-1-1 database. Verizon performs the same limited functions when it loses a customer to Cavalier. But Verizon does not charge Cavalier (or any other CLEC) for these work functions, and there is no basis for Cavalier to charge Verizon for the same functions. *Albert Panel Rebuttal* at 23:12-13. Cavalier provides a chart that supposedly details the work functions Cavalier performs when a "winback" occurs (*Ferrio Direct* at 3:3-5), but Verizon does not charge Cavalier for any of the functions described in that chart. *Albert Panel Rebuttal* at 23:12-13.

Cavalier contends that the winback charges it proposes here are the same as "what Verizon charges Cavalier," (*Ferrio Direct* at 3:9), but neglects to mention that these charges are UNE charges that apply when Cavalier orders a new loop, not charges associated with the limited winback functions described above. The charges Cavalier wants to make reciprocal (Verizon's UNE charges for service order processing and installation) apply when Cavalier orders a new UNE loop. But when Verizon assesses these charges on Cavalier, it is because Verizon is providing Cavalier a facility – a new UNE loop. When Cavalier wins a customer from Verizon and orders a loop from Verizon, Verizon charges a non-recurring and a recurring charge for the loop. The non-recurring charge is intended to cover Verizon's one-time costs for provisioning the loop. For example, in some cases, a technician has to go out into the field to rearrange facilities in order to make a loop available to Cavalier's customer. In other cases, a central office technician will cross-connect the loop to Cavalier's collocation arrangement.

Cavalier provides no such facility to Verizon when Verizon wins a customer from Cavalier because it does not provide Verizon with the loop.

At the hearing, Cavalier claimed for the first time that its winback charge is also comparable to the disconnect charge that Verizon assesses when a Verizon technician physically disconnects a UNE Loop. *Hearing Tr.* at 638:1-9 (Ferrio). Again, Cavalier completely ignores the fact that these two charges apply to entirely different functions. Verizon's disconnect charge is a Virginia SCC-approved charge that covers work for disconnecting an unbundled loop. Cavalier does not provide unbundled loops to Verizon and, obviously, does not disconnect them either

Moreover, Verizon's disconnect charge is not a "winback" charge. Instead, it applies in *any* situation where Cavalier is no longer providing service to a customer over a loop. This might occur, for example, because a Cavalier customer moved, went out of business, shifted to a carrier other than Verizon, or wanted a new service from Cavalier that could not be provided over the existing loop – situations in which there is no winback.

The Bureau should reject this belated argument. Prior to the hearing, Cavalier never mentioned Verizon's disconnect charge with Cavalier's proposed winback charge. Cavalier witness Ferrio's testimony does not even mention Verizon's disconnect charge. *Ferrio Direct* at 3:3-5. To the contrary, Cavalier expressly states that its winback charge would mirror Verizon's $13.69 charge for *installation* of a UNE, not the *disconnection* of a UNE. *Ferrio Direct* at 3:10.

Finally, Cavalier's proposed winback charge unlawfully discriminates against Verizon. If adopted, Verizon would be the only carrier in Virginia required to pay Cavalier "a processing charge" for winning a customer from Cavalier. Cavalier's Proposed Section 11.17.1. Cavalier witness Clift candidly admitted at the hearing that no other carrier – including AT&T, Cox, or

MCI – pay Cavalier a charge when it wins a customer from Cavalier. *Hearing Tr.* at 636:4-9 (Clift). This is the very reason why charges such as Cavalier's winback charge are more appropriately contained in tariffs that apply equally to all similarly situated carriers, rather than in two-party interconnection agreements.

For all of the reasons stated above, the Bureau should reject Cavalier's proposed additions to Section 11.17 and Exhibit A(2).

DATED: October 28, 2003.

Respectfully submitted,

Kimberly A. Newman

Karen Zacharia
Kathleen M. Grillo
Verizon
1515 North Court House Road
Arlington, VA 22201
(703) 351-3193
(703) 351-3663 (fax)
karen.zacharia@verizon.com
kathleen.m.grillo@verizon.com

Michael E. Glover

Of Counsel

James R. Young
Kimberly A. Newman
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006-4001
(202) 383-5382
(202) 383-5414 (fax)
jryoung@omm.com
knewman@omm com

CERTIFICATE OF SERVICE

I certify that on the 28th day of October, 2003, the Post Hearing Brief of Verizon Virginia Inc. in the above-captioned proceeding was served on the following parties:

Via Overnight Delivery and Electronic Mail:

Stephen T. Perkins
Cavalier Telephone, LLC
2134 West laburnum Avenue
Richmond, Virginia 23227-4342
sperkins@cavtel.com

Martin W. Clift, Jr.
Cavalier Telephone, LLC
2134 West Laburnum Avenue
Richmond, VA 23227-4342
mclift@cavtel.com

Richard U. Stubbs
Cavalier Telephone Mid-Atlantic, LLC
965 Thomas Drive
Warminster, Pennsylvania 18974
rstubbs@cavtel.com

Via Electronic Mail:

Mr. John Adams (john.adams@fcc.gov)
Ms. Margaret Dailey (mdailey@fcc.gov)
Mr. Brad Koerner (bkoerner@fcc.gov)
Mr. Richard Lerner (rlerner@fcc.gov)
Mr. Marcus Maher (marcus.maher@fcc.gov)
Mr. Jeremy Miller (jmiller@fcc.gov)
Ms. Terri Natoli (tnatoli@fcc.gov)

Kimberly A. Newman

Kimberly A. Newman.